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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,733	11/08/2006	Willem Theodoor Martinus Pater	313632001800	1678
25225 7590 05/26/2010 MORRISON & FOERSTER LLP 12531 HIGH BLUFF DRIVE SUITE 100 SAN DIEGO, CA 92130-2040			EXAMINER SAYALA, CHHAYA D	
			ART UNIT 1781	PAPER NUMBER
			MAIL DATE 05/26/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/575,733	<b>Applicant(s)</b> PATER ET AL.	
	<b>Examiner</b> C. SAYALA	<b>Art Unit</b> 1781	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/6/2006</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

At page 9 of the specification, last paragraph, the specification states:

In another embodiment, the pet's chew is moulded by injection moulding. In accordance with this embodiment, it is preferred that the destructureized starch mixture is pressed through a mesh having a pore size of from 1 to 5 mm after extrusion, or preferably as a last step of the extrusion process.

This is the only paragraph where “the destructureized starch mixture” occurs. Based on this, the mention of “**the**” destructureized starch mixture lacks antecedent basis and therefore, any previous (or subsequent) description of it.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 13, 16-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 16 which depends from claim 15 and in turn from claim 1, recites that "the mixture" is extruded through a mesh. In the specification, at page 9, the last paragraph states that it is the destructureized starch mixture that is pressed through the mesh as recited. Based on this and taken in light of the specification, it is not clear whether the mixture of this claim refers to the mixture of claim 1 or to the destructureized starch mixture described at page 9, for which there is no proper antecedent basis. [Note: It has already been pointed out that the destructureized starch mixture lacks proper description in the specification except for a mere mention of it at page 9, line 25, the only reference of it.]

In claim 13, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

In claim 17, the moisture content of the thermoplastic starch is recited as being based on the thermoplastic starch. It is being assumed that the thermoplastic starch being referred to is the extruded starch and water content of this extruded starch. Clarification is required. Claim 1 does not indicate that the thermoplastic starch is extruded starch. The specification refers to the moisture content recited as being related to the extruded starch.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-10, 12-15, 17, 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 01/45517.

The patent teaches a pet chew which is an edible thermoplastic that contains starch, which can be chemically altered, native or a mixture, (page 3), fiber (1 to 10 wt%), see page 3, lines 4-5, and water (8 to 12 wt% in the final form and 10 to 20 wt% in the initial mixture) (see page 3, line 4 and page 11, line 22). Note the use of vitamins and minerals, (page 4, lines 28-34), and up to 20 wt% plasticizers (page 10, lines 18-22). Of the plasticizers used, glycerol and polyols are disclosed at pages 4 & 10. Oils such as flax oil are shown at page 5, that inherently contain fatty acids. Lecithin is disclosed in the examples. Additives providing aroma is disclosed at page 10, lines 24-25. The starch is disclosed at reference claims 6-8, fiber at claim 9, plasticizer at claims 15-18. The water content of the thermoplastic mixture is shown at claim 1 as 10 to 20 wt%. Extrusion temperatures are disclosed at page 11, last full paragraph. The pet chew can be formed by injection molding and the shapes are also given at page 12. Instant claims 2-4 are disclosed at page 4, lines 19-30. Instant claim 9 is disclosed at page 3, lines 30-32. Instant claim 13 is disclosed at page 11, lines 1-2. Claim 19 is written in a product-by-process format and depends from claim 1 and since claim 1 is clearly anticipated, then claim 19 is anticipated as well.

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3. Claims 1-4, 6-12, 14-15, 17, 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0552897.

The edible chew product of the patent consists of fiber (cellulose), 20-50 wt%, starch (which includes hydroxylates and mixtures derived from tubers, corn and wheat, page 3, lines 38-50), about 30 to about 60 wt%, glycerol or sorbitol (1 to 15 wt%). See page 3, page 4, lines 44+. The fiber particles are about 5 to about 1000 microns (instant claim 11). Note flavoring substances at page 4, lines 44-48. Extruder temperatures are disclosed at page 5, lines 44-45. The moisture content is 12 to 35 wt% (see page 6, line 3, claim 7) in the final product and 20-50 wt% in the initial mixture (page 5, line 7). Note that the Example shows a moisture content of 10.82% in the initial mixture. Page 7, lines 1-7 shows that the extrudate was in the form ribbons and cut into pieces of about 3 inches, giving it a bar or a natural shape.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 11, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 01/45517 taken with EP 552897 and in view of EP 0838153.

The WO patent does not disclose the cellulose fiber length, and the mesh pore size and the injection molding temperatures as claimed herein at claim 18. However, the WO patent discloses that the product uses cellulose fibers, uses injection molding in forming the product (see page 3, lines 30-32; page 11, line 4). The EP patent also drawn to a similar chew that contains the same ingredients, teaches the length of fibers as being between about 5 to about 1000 microns. One of ordinary skill in the art would have found it useful to incorporate such lengths in the invention of the WO patent, because of the similarity of such fiber ingredient (cellulose). With regard to the injection molding process in the WO patent, details of performing such a molding process is detailed in the EP '153 patent which describes making a beaded extrudate from starch that has a size 3 to 10 mm. See col. 5, lines 50-59. The beads (or granulates) are then molded at barrel temperatures of 121 to 204<sup>0</sup>C. To Incorporate such process details in the WO patent which indicates the making of the product therein by injection molding but fails to give any particulars would have been useful and obvious to the practitioner.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited but not applied shows the benefits of using chemically modified starch and the beneficial properties of this starch even in pet foods.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/C. SAYALA/  
Primary Examiner, Art Unit 1781**